

**WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE
FOR REGION 2**

105 U.S. Courthouse & Federal Building
Utica, New York 13501
(315) 793-8191
By: Erin P. Champion, Esq.

OFFICIAL COMMITTEE OF UNSECURED CREDITORS

Bond, Schoeneck & King, PLLC
One Lincoln Center
Syracuse, New York 13202
(315) 218-8000
By: Stephen A. Donato, Esq.
Sara Temes, Esq.

M. BURTON MARSHALL, DEBTOR

Barclay Damon
125 East Jefferson Street
Syracuse, New York 13202
(315) 413-7112
By: Jeffery A. Dove, Esq.
Beth Ann Bivona, Esq.

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK**

-----X
In re : Case No. 23-60263- pgr
:
M. BURTON MARSHALL, :
:
Debtor. :
-----X

JOINT STIPULATION OF FACTS

Pursuant to the Scheduling Order entered on August 8, 2023, the Court directed the parties to file and serve the following information on or before August 30, 2023, a joint stipulation of facts, a list of exhibits and pre-hearing statements including: contested material facts; contested legal issues (including whether the Court has jurisdiction to enter final orders); evidentiary issues (including any anticipated objections); and the identification of witnesses each

party intends to call at the evidentiary hearing scheduled for September 6, 2023. Accordingly, counsel for the United States Trustee for Region 2 (the “**United States Trustee**”) counsel for the Official Committee of Unsecured Creditors (the “**Committee**”), and counsel for M. Burton Marshall (“**Debtor**”) conferred and prepared this Joint Stipulation of Facts:

1. On April 20, 2023, the Debtor filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code (the “Petition Date”). The Debtor filed his schedules, statement of monthly income, and statement of financial affairs on the Petition Date. Dkt. No. 1, 3, 4.
2. On April 20, 2023, the Debtor filed a Declaration Pursuant to Local Bankruptcy Rule 2015. Dkt. No. 5.
3. The Debtor continues to remain a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
4. On May 9, 2023, the United States Trustee filed a Notice of Appointment of Creditors Committee. Dkt. No. 52.
5. On June 27, 2023, the United States Trustee filed a Motion to Appoint a Chapter 11 Trustee pursuant to 11 U.S.C. § 1104(a) (“the United States Trustee’s Motion”), which was joined by the Committee and two groups of unsecured creditors, seeking the appointment of a trustee under 11 U.S.C. §§ 1104(a)(1) and (a)(2). Dkt. No. 106.
6. The Court has jurisdiction to consider the United States Trustee’s Motion.
7. The Court issued a Memorandum-Decision and Order on the United States Trustee’s Motion on July 28, 2023. Dkt. No. 160.
8. The Court has jurisdiction to enter a final order.
9. On May 11, 2023, the Debtor filed an application to appoint Barclay Damon, Jeffery A. Dove, Esq., as counsel, and an order was entered May 31, 2023, approving the

employment. Dkt. No. 55, 81.

10. The first meeting of creditors pursuant to 11 U.S.C. § 341 was scheduled to be held telephonically on May 22, 2023, but was adjourned to June 5, 2023, at which time the Debtor appeared and testified under oath (“341 Meeting of Creditors”). The 341 Meeting of Creditors was continued to June 26, 2023 (“Continued 341 Meeting of Creditors”).

11. The Debtor is an individual operating a series of sole proprietorships including tax preparation, self-storage, printing, insurance brokering, property maintenance, and real estate rentals of over 100 of his properties (containing over 240 residential units) located in the Central New York area, primarily in Madison County.

12. Pursuant to 11 U.S.C. § 109(a), “only a person that resides or has domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title.”

13. Pursuant to 11 U.S.C. § 101(41), the term “person” includes individual, partnership, and corporation... .”

14. The Debtor owns 100% of the stock of an insurance agency, Miles B. Marshall, Inc.; this corporation did not seek bankruptcy relief.

15. The Debtor owns a residence located at 20 Payne St. Hamilton, New York and seasonal residence located at 918 Taylor Grove, Madison, New York, jointly with his spouse Megan M. Marshall. All other real estate in which the Debtor has an interest is owned in his individual capacity.

16. On Schedule A/B, the Debtor disclosed his interest in the following accounts and balances, Berkshire Bank: #2301, \$396,637¹ balance; d/b/a MM Press #8128, \$911 balance; d/b/a Marshall Tax Service #0522, \$277 balance; d/b/a Marshall Moving #1246, \$230 balance, d/b/a

¹ All amounts are rounded to the nearest dollar.

Marshall Storage #8136, \$3,813 balance; d/b/a Marshall Maintenance #2218, \$215 balance; d/b/a Marshall Rentals #8400, \$1,532 balance plus tenant security deposit accounts. Dkt. No. 3.

17. In his Schedules, the Debtor disclosed assets of \$21,854,009.89 against liabilities of \$92,746,873.06; the majority of debt consists of unsecured promissory notes issued to individuals, including friends, neighbors, customers, clients, as well as family members. Dkt. No. 3.

18. Numerous creditors believe they are victims of a wide-ranging, long-standing Ponzi scheme, wherein they were promised an 8% return for investing in a fund that the Debtor claimed to be maintaining. Dkt. No. 160.

19. The Debtor denies any fraud and claims that his obligations to noteholders were loans he intended to repay through the appreciation of the value of his real estate holdings. Dkt. No. 160.

20. Prior to seeking relief under Chapter 11, the Debtor may have used proceeds of new loans, in addition to his personal and business income, to pay existing noteholders, from a single checking account. Dkt. No. 160.

21. The Debtor financed his business with personal borrowings pursuant to unsecured thirty-day demand notes. Dkt. No. 5.

22. On April 21, 2023, the Debtor filed a Motion to Authorize Continued Use of Existing Cash Management System and to Maintain Existing Bank Accounts (“Cash Management Motion”) to which the United States Trustee objected on May 8, 2023. Dkt. No. 10. The Debtor, in support of his Cash Management Motion, asserted that the relief would ensure the Debtor’s orderly entry into and administration of his Chapter 11 case and that continued use of the accounts would avoid disruptions and distractions which could potentially divert the Debtor’s attention

from more pressing matters in the case. Dkt. No. 10. The Cash Management Motion remains pending.

23. On May 22, 2023, the Debtor engaged Algon Capital, LLC d/b/a Algon Group, to act as financial advisor and chief restructuring officer; the Debtor filed the application (and amended application to include exhibit) to approve the employment on May 23, 2023 (“Application to Employ Algon”). Dkt. No. 71, 72.

24. On June 14, 2023, the Committee filed an application to retain Bond Schoeneck & King, PLLC as counsel for the Official Committee of Unsecured Creditors and an order was entered on July 27, 2023, approving the employment. Dkt. No. 90.

25. On June 23, 2023, the Committee filed an *ex parte* application to retain HKAGlobal, LLC (“HKA”) as its financial advisors and an order was entered on June 28, 2023, approving the employment. Dkt. No. 103.

26. On July 18, 2023, both the United States Trustee and the Committee filed an Objection to the Application to Employ Algon. Dkt. No. 133, 138.

27. On July 18, 2023, the Debtor filed a reply in further support of the Application to Employ Algon, seeking expansion of the scope of Algon’s duties, the Debtor contending that it had “ceded all decision authority over the businesses” and granted Algon “full control over the business’ finances and accounts.” Dkt. No. 134.

28. On July 24, 2023, the Debtor filed an additional submission in support of the Application to Employ Algon, in which the Debtor detailed Algon’s alleged performance of its management duties and the controls in place to ensure his surrender of control is effective, including changing the office locks and not providing a key, opening new financial accounts, and revoking Debtor’s signatory authority on existing accounts. Dkt. No. 151.

29. On August 9, 2023, the United States Trustee filed a Supplemental Objection to the Application to Employ Algon. Dkt. No. 176. On August 14, 2023, the Committee also filed a Supplemental Objection to the Application to Employ Algon. Dkt. No. 182.

30. The Debtor filed the Chapter 11 Monthly Operating Report for the Month Ending May 2023 on June 28, 2023 (“May MOR”). Dkt. No. 115. The May MOR was signed by the Debtor under the penalty of perjury. According to the May MOR:

- a. Cash balance at beginning of month: \$87,515
- b. Cash balance at end of month: \$166,467
- c. Total income in reporting period: \$336,030
- d. Total expenses in reporting period: \$293,652

31. The May MOR included the following accounts in the Summary of Account Balance: M. Burton Marshall #2301, “d/b/a MM Press” #8128, “d/b/a Marshall Moving” #1246, “d/b/a Marshall Storage” #8136, “d/b/a Marshall Maintenance” #2218, and “d/b/a Marshall Rentals” #8400, balance plus tenant security deposit accounts. No account for “d/b/a Marshall Tax Service #0522” was listed.

32. The Debtor filed the Chapter 11 Monthly Operating Report for the Month Ending June 2023 on July 24, 2023 (“June MOR”). Dkt. No. 149. The June MOR was signed by the Debtor under the penalty of perjury. The Debtor filed a Supplemental Chapter 11 Monthly Operating Report to the June MOR (“June MOR Supplement”) on August 25, 2023. Dkt. No. 191. According to the June MOR:

- a. Cash balance at beginning of month: \$167,338
- b. Cash balance at end of month: \$121,973
- c. Disbursement made by third party for benefit of the estate:

\$65,000

d. Total income in reporting period: \$335,894

e. Total expenses in reporting period: \$397,745

33. The June MOR included the following accounts in the Summary of Account Balance: M. Burton Marshall #2301, “d/b/a MM Press” #8128, “d/b/a Marshall Storage” #8136, and “d/b/a Marshall Rentals” #8400, balance plus tenant security deposit accounts. No accounts for “d/b/a Marshall Tax Service” #0522, “d/b/a Marshall Moving” #1246, or “d/b/a Marshall Maintenance” #2218 was listed.

34. The Debtor filed the Chapter 11 Monthly Operating Report for the Month Ending July 2023 on August 22, 2023 (“July MOR”). Dkt. 190. The July MOR was signed by the Debtor under the penalty of perjury. According to the July MOR:

a. Cash balance at beginning of month: \$121,973

b. Cash balance at end of month: \$162,153

c. Disbursement made by third party for benefit of the estate:
\$57,980

d. Total income in reporting period: \$302,318

e. Total expenses in reporting period: \$262,756

35. The July MOR included the following accounts in the Summary of Account Balance: M. Burton Marshall #2301, “d/b/a MM Press” #8128, “d/b/a Marshall Storage” #8136, and “d/b/a Marshall Rentals” #8400, balance plus tenant security deposit accounts. No accounts for “d/b/a Marshall Tax Service” #0522, “d/b/a Marshall Moving” #1246, or “d/b/a Marshall Maintenance” #2218 was listed.

36. Neither the Committee nor the US Trustee have provided any suggested language

to provide additional safeguards that the Debtor has been divested of management responsibilities.

37. In response to requests made by each of the United States Trustee and the Committee, Algon has produced thousands of pages of the Debtor's business records.

Dated: Utica, New York
August 30, 2023

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE

/s/ Erin P. Champion
By: Erin P. Champion, Esq.
Assistant United States Trustee
105 U.S. Courthouse & Federal Building
Utica, New York 13501
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Bond, Schoeneck & King, PLLC
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